

### REMARKS

This Amendment is being filed to add new claims 29 and 30 to the application. These claims are identical to original claims 4 and 9, respectively, which were inadvertently cancelled from the application following the election of species requirement dated August 25, 2004.

More specifically, in the August 25<sup>th</sup> election of species requirement, the applicant was required to select from the groups of claims, as follows:

Application/Control Number: 09/753,167  
Art Unit: 2644

Page 2

### **DETAILED ACTION**

#### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: I) Claims 5, 6, 7, 10, 14, 15, 16, 17, 20, 21, 28 drawn to two drivers and midpoint (see fig. 3); II) Claims 12, 22, 23, 24 drawn to two drivers at .25L and .75L (see fig. 4); III) Claims 4, 9, 13, and 27 drawn to reflective surface (see fig. 2).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1, 2, 3, 8, 11, 25, and 26 are generic.

Following election on September 27, 2004, claims 4 and 9 were withdrawn from consideration, as evidenced by the second page of the Office Action dated March 11, 2005 (below):

Applicant : J. Richard Aylward  
Serial No. : 09/753,167  
Filed : January 2, 2001  
Page : 7 of 8

Attorney's Docket No.: 02103-369001 / AABOSS12

Office Action Summary		Application No.	Applicant(s)
		09/753,167	AYLWARD, J. RICHARD
		Examiner	Art Unit
		Justin Michalski	2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extension of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any accrued patent term adjustment. See 37 CFR 1.704(h).

**Status**

1) ☒ Responsive to communication(s) filed on 27 September 2004.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) 4, 9, 12, 13, 18, 19, 22, 24 and 27 is/are withdrawn from consideration.

We note that claim 4 depended from claim 1, and that claim 9 depended from claim 8, which itself depended (and still depends) from claim 1. Thus, both claims 4 and 9 ultimately depend from claim 1.

In the Amendment filed on March 13, 2006, claims 4 and 9 were canceled. Accordingly, this Amendment is being filed to reintroduce those claims into the application (as claims 29 and 30, respectively). Although original claims 4 and 9 were in a separate species from the elected claims, claims 4 and 9 (now claims 29 and 30) depend ultimately from claim 1<sup>1</sup>, which was indicated to be generic. Therefore, in accordance with MPEP §821.04(a) (partly reproduced below), those claims (29 and 30) should be indicated to be allowable:

<sup>1</sup> Claim 9 also depends from claim 8, which was also indicated to be generic.

Applicant : J. Richard Aylward  
Serial No. : 09/753,167  
Filed : January 2, 2001  
Page : 8 of 8

Attorney's Docket No.: 02103-369001 / AABOSS12

821.04(a) Rejoinder Between Product Inventions; Rejoinder Between Process Inventions [R-5]

Where restriction was required between independent or distinct products, or between independent or distinct processes, and all claims directed to an elected invention are allowable, any restriction requirement between the elected invention and any nonelected invention that depends from or otherwise requires all the limitations of an allowable claim should be withdrawn. For example, a requirement for restriction should be withdrawn when a generic claim, linking claim, or subcombination claim is allowable and any previously withdrawn claim depends from or otherwise requires all the limitations thereof. (Emphasis added)

A semicolon has also been changed to a comma in claim 1.

The undersigned has been unable to reach the Examiner by telephone, and will continue to follow-up by telephone. In this regard, the undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at 617-521-7896.

Please apply any fees or credits due in this case to Deposit Account 06-1050, referencing Attorney Docket No. 02103-369001.

Respectfully submitted,  
FISH & RICHARDSON, P.C.

Date: June 9, 2008

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